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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,310	03/01/2004	Michael Obi Ezekwe	2004-01	3527

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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1655

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,310

Applicant(s)

EZEKWE ET AL.

Examiner

S. B. McCormick-Ewoldt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 13-24 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-12, 25-27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>August 2, 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Status of Application

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1655.

Election/Restrictions

Applicant's election with traverse of Group II in the reply filed on June 16, 2005 is acknowledged. The traversal is on the ground(s) that it would not pose an undue burden on the Examiner in that a search of the prior art for all of the claims would be identical or substantially similar. This is not found persuasive because the inventions are different and distinct each from the other.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-3, 13-24 and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 16, 2005.

Claims Pending

Claims 4-12, 25-27 and 29-31 will be examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-12, 25-27 and 29-31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4 and 29, the recitation "full bloom" is indefinite because it is not clear what is encompassed by this recitation. Clarification is needed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 4-9, 25-26, 29-31 are rejected under 35 U.S.C. 102(a) as being anticipated by Ezekwe *et al.* (“Beneficial Influence of Purslane and Waterleaf Supplementation on Cardiovascular Disease Risk in Humans,” FASEB Journal, March 20, 2002, Vol. 16, No.4, pp. A639).

Ezekwe *et al.* expressly teach administering 3 grams of waterleaf (i.e. *Talinum triangulare*), which are rich in antioxidants and vitamins, to human subjects at lunch and dinner meals to reduce elevated cholesterol levels and blood lipids.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4-12, 25-27, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezekwe *et al.* (“Beneficial Influence of Purslane and Waterleaf Supplementation on Cardiovascular Disease risk in Humans,” FASEB Journal, March 20, 2002, Vol. 16, No.4, pp. A639) and Internet website <http://www.news.wisc.edu/3358.html>.

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Ezekwe *et al.* disclose administering 3 grams of waterleaf (i.e. *Talinum triangulare*), which are rich in antioxidants and vitamins, to human subjects at lunch and dinner meals to reduce elevated cholesterol levels and blood lipids. Ezekwe *et al.* does not disclose administering the waterleaf extract to swine or poultry.

The Internet website <http://www.news.wisc.edu/3358.html> disclose that swine develop high cholesterol and clogged arteries that are similar to human symptoms (whole document).

Ezekwe *et al.* teach administering waterleaf extract (i.e. *Talinum triangulare*) to humans to reduce elevated levels of cholesterol and that waterleaf is rich in antioxidants and vitamins. The Internet website Internet website <http://www.news.wisc.edu/3358.html> discloses that swine develops high cholesterol similar to human symptoms. One of ordinary skill in the art would have been motivated to administer waterleaf extract to reduce levels of cholesterol in humans as well as animals. In addition, by administering waterleaf to swine, one would improve the meat quality. Also, it is known in the art that poultry eggs have high cholesterol and by administering waterleaf to poultry, one would expect lower cholesterol in poultry products. Thus, a person of ordinary skill in the art would reasonably expect that waterleaf could reduce cholesterol in animals as well as humans. Based on this reasonable expectation for success, a person of ordinary skill in the art would be motivated to use the teachings of the references to administer waterleaf to reduce cholesterol in humans and animals.

The references also do not specifically teach administering the waterleaf extract to swine or poultry as claimed by Applicant. Administering the waterleaf extract to swine or poultry for feed is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Administering high protein quality feed to swine and poultry is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to administer the waterleaf extract to swine or poultry in order to best achieve the desired results. It is known in the art that animals feeds high in protein would Thus, absent some demonstration of unexpected results from the claimed parameters, the administering the waterleaf extract to swine or poultry would have been obvious at the time of Applicant's invention.

The references also do not specifically teach the waterleaf extract in the dosage form claimed by Applicant. The dosage form in a composition is clearly a result effective parameter

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that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the dosage form in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this type of dosage form would have been obvious at the time of Applicant's invention.

Thus, a person of ordinary skill in the art would reasonably expect that waterleaf extract would be successfully used to reduce cholesterol in humans and animals. Based on this reasonable expectation for success, a person of ordinary skill in the art would be motivated to modify the teachings of the references.

Summary

No claim is allowed.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan D. Coe
8-16-05

**SUSAN COE
PRIMARY EXAMINER**